1947.

File No. O Munis Govt Tax/4

Legal **DEPARTMENT**

A **BRANCH**

K

Subject:—

PHE

Opinions Re:—

Municipal Tax to be paid by Government on Government buildings

File No. O Munis Govt Tax

Std. Sectt. Slip 24 B e.

47

494-A

C O N T E N T S.

Legal Department File No. G.Misc.Govt. Cons./1947.

Ltr. No.	Compilation No.	Subject.	Pages.
		Opinions regarding Municipal tax to be paid by Govt. on Govt. buildings.	
1.	G.No.5734/3-4-47.	Question whether police buildings would be exempt under Sec. 77(1) of the Bombay Dist. Police Act, 1890 from payment of general water rate levied by the Ahmedabad and Bombay Municipalities.	1 - 6.

BMK/7.5.

STATEMENT.

The point for consideration in this case is whether police buildings would be exempt under section 77(1) of the Bombay District Police Act, 1890 from payment of general water rate levied by the Ahmedabad and Alibag Municipalities.

2. Section 77(1) of the Bombay District Police Act, 1890 provides:

> "No municipal or other local rates shall be payable by the Provincial Government on account of the occupation or use of any house or place by members of the police force for the convenient performance of their duties".

This provision was interpreted at various times by different D.L.A.s. as meaning that the exemption extends to only such taxes which are levied on account of occupation or use of a house and not to such taxes as a water rate levied by the local body for services rendered. This view was expressed by -

1. Mr. Batty in his opinion No.1033, dated the 21st July 1934,
2. Mr. Wild in his opinion No.30-P, dated the 26th May 1922,
3. Mr. Murphy in his opinion No.2207, dated the 6th December 1923, and
4. Mr. Allison in his opinion No.2610, dated the 30th November 1931.

* Slip Lin L.D. Vol. E-75.
@ Slip U in L.D. Vol. F.2/50.
@ Slip V in L.D. Vol. F.2/51.

On the other hand, in his opinion No. 19, dated the 19th March, 1917 the Advocate General observed as follows:-

* Slip R in L.D. Vol.O.Munic.Distt. 1931-32.
# Slip S in L.D. Vol. Of Adv.G. opinions 1915-17.

> "The police are quartered in police lines for the same reasons as soldiers are quartered in the barracks, viz., to facilitate training and discipline and to have the men available at one convenient spot whenever required.
>
> On these facts it appears to me to be clear that the police occupy and use the lines for the convenient performance of their duties.
>
> The term 'Municipal rates' appears to me to include all municipal taxes, rates and cesses (as these expressions are used in the Bombay District Municipal Act III of 1901) levied in respect of the occupation or use of the buildings.
>
> I am accordingly of opinion that the residential portion of the police lines in the District are not subject to Municipal taxation".

It appears that the view taken by the D.L.A.s was supported by the words "on account of the occupation or use". In section 77(1) these words would imply that the taxes and rates referred to therein are only the taxes which are levied on houses as such and not on account of services rendered by the Municipality. (P.T.O.

In his opinion No.4156* dated the 17th July 1939, the R.L.A. referred the question to the Advocate General for opinion pointing out the conflict between the opinions of the various R.L.A.s and the Advocate General's opinion of 1917. In his opinion No.25°, dated the 29th July 1939 the Advocate General opined:

* Slip Q in L.D. Vol.O.Munic.Govt. Tax. 1926-40.

° Slip P. -do-

> "The general sanitary cess is imposed by the Dhulia Municipality under the powers conferred by section 59 (b)(vii) of the Bombay District Municipalities Act,1901. I think that this cess as distinguished from the special sanitary cess imposed under clause (vi) thereof can properly be considered on account of the use of the house or place in question within the meaning of ~~xxx~~ that expression in section 77(1) of the Bombay District Police Act,1890".

The R.L.A. in his opinion No.7575*, dated the 13th October 1943 held that "the distinction made by the Advocate General between general sanitary cess and the special sanitary cess will hold good even in respect of the general water rate and the special water rate (see clause (x) of section 73 of the Bombay Municipal Boroughs Act,1925, and clause (VIII) of section 59(b) of the Bombay District Municipal Act, 1901. It appears therefore that under section 77(1) of the Bombay District Police Act police buildings would be exempt from the payment of the general water rate".

* Slip G in L.D. file O. Munic. Govt. Tax/45

3. In view of the conflict of views and importance of the case, the Advocate General is requested to favour Government with his opinion thereon.

Memorandum of Legal Affairs,--

U.S. to the Advocate General, Bombay, No.5794.

Dated the 3rd June 1947.

SNT

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No. 53 of 1947.

Advocate General's Chambers,
High Court,
Bombay, 10th October 1947.

U.O.N. to the Advocate General of Bombay,
No.5734 dated the 3rd of June 1947.

Opinion.

Section 77(1) of the Bombay District Police Act, 1890, provides "no municipal or other local rates shall be payable by the provincial government on account of the occupation or use of any house or place by the members of the police force for the convenient performance of their duties". The question is whether this is an exemption in respect of all municipal or other local rates or whether it is an exemption only in regard to such rates as are leviable by reason of the occupation of the premises.

Municipal taxation is of two varities. There are general taxes, e.g. a general tax on a house or a building and a general water tax which are levied for the purpose of raising funds to meet the expenses of running the municipal activities for the benefit of the district generally There are also special taxes such as a special water cess or rate levied on individuals in respect of the services rendered to a particular property. Thus a special halalkhore tax may be levied in regard to a particular property because specific services are performed in regard to that property.

Strictly speaking, the latter class of charge is not a tax at all. The word "tax" generally means an impost levied on occupiers or owners of properties,not with reference to any services rendered, but for the general expenses of the municipality, the other class of impost is generally known not by the name of a tax as a cess or rate. I do not think however that the municipal legislation has made any particular difference or distinction between the two. I am of the opinion that the views expressed by the various H.C.J.s in the past to the effect that the dominant words in the section are "on account of the occupation or use of any house" are correct. Any levy which is in regard to the services rendered do not in my opinion fall within the section and exemption cannot be claimed in respect of that.

SNK/7.3. Sd/- Advocate General.